

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED

FEB 03 2000

LAWRENCE K. BAERMAN, CLERK
ALBANY

COPIES SENT
2/29/00
by UNITED STATES OF AMERICA,

Plaintiff,

v.

WESTERN PUBLISHING COMPANY, INC.,
I.S.A. IN NEW JERSEY, INC.,
F.I.C.A. a/k/a/ DUTCHESS SANITATION
SERVICES, INC.,
JOSEPH FIORILLO, SR., and
HUDSON VALLEY ENVIRONMENTAL
SERVICES, INC.,

Defendants.

CIVIL ACTION NO.

94-CV-1247 (CGC/DNH)

337
KW

F.I.C.A. a/k/a/ DUTCHESS SANITATION
SERVICES, INC. and JOSEPH FIORILLO,
SR.,

Third-Party Plaintiffs,

v.

FORD MOTOR COMPANY,

Fourth-Party Defendant.

FORD MOTOR COMPANY,

Fourth-Party Plaintiff,

v.

ALFA LAVAL, INC. a/k/a DELEVAL
SEPARATOR, INC., ET AL.,

Fourth-Party Defendants.

PARTIAL CONSENT DECREE

240952



I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9607 and 9613, on September 26, 1994.

B. The United States in its complaint seeks to recover costs that have been or will be incurred by EPA and the Department of Justice for response actions in connection with the release or threatened release of hazardous substances at the Hertel Landfill Superfund Site, Plattekill, Ulster County, New York (the "Hertel Site").

C. In response to a release or a threat of a release of a hazardous substance(s) at or from the Hertel Site, EPA performed a remedial investigation/feasibility study ("RI/FS") at the Hertel Site in 1991.

D. On September 27, 1991, EPA issued a Record of Decision ("ROD") for the Site. The remedy selected in the ROD called for, inter alia, constructing a multi-layer cap over the landfill, installing gas vents in the landfill, implementing a comprehensive groundwater monitoring program, fencing the 13-acre landfill, pumping and treating the groundwater using membrane microfiltration to remove metals and ultraviolet light and

hydrogen peroxide oxidation to remove organics, and mitigating the potential harmful impacts to the adjacent wetlands.

E. On September 21, 1992, EPA issued Administrative Order No. II CERCLA-20217 ("Administrative Order") for design and implementation of the remedy called for in the ROD. The Administrative Order was issued pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), because of the existence of an imminent and substantial endangerment to the public health or welfare or to the environment due to an actual or threatened release of hazardous substances from the Hertel Site. Six Respondents were named on the Administrative Order, including defendant I.S.A. in New Jersey, Inc. ("I.S.A."). I.S.A. has never complied with the Administrative Order.

F. On October 8, 1991, I.S.A., among others, was indicted by a grand jury empaneled in the United States District Court for the Southern District of New York on charges of violations of the federal Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961, et seq., as well as conspiracy to commit bribery, bribery, money laundering, conspiracy to commit tax evasion, and tax evasion, in an action styled United States v. Robert J. Mongelli, et al., No. 91 Cr. 821 (VLB) (S.D.N.Y.).

G. On September 25, 1992, the United States Attorney for the Southern District of New York entered into a plea agreement with I.S.A., among others, to resolve its liability under the indictment. Under the terms of the plea agreement, I.S.A. and other entities were to be sold and proceeds were to be used to

satisfy \$5 million in RICO penalties, as well as other outstanding liabilities to the United States.

H. On October 14, 1994, The United States entered into and Agreement and Covenant Not To Sue pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§9606, 9607(a), with Browning-Ferris Industries of New York, Inc.; Browning-Ferris Industries of Patterson, N.J., Inc.; and Browning-Ferris Industries of South Jersey, Inc. (collectively referred to as "BFI") regarding the purchase by BFI of the assets of I.S.A. and other entities, in exchange for two hundred and fifty thousand dollars (\$250,000), from which fifty five thousand dollars (\$55,000) were paid toward response costs incurred by EPA at the Hertel Site.

I. On October 19, 1994, Browning Ferris Industries of Paterson, New Jersey, Inc. and Browning Ferris Industries of South Jersey, Inc., executed an Assets Purchase Agreement to acquire the assets of I.S.A., which had previously been approved by the U.S. Attorney for the Southern District of New York.

J. The acquisition of the assets of I.S.A. was consummated on October 19, 1994, and \$1,000,000 (one million dollars) has been set aside in an escrow account to satisfy, inter alia, the obligations of this Consent Decree.

K. In its complaint the United States specifically seeks to recover past costs incurred in connection with response actions taken for the Hertel Site, as well as a declaratory judgment for future costs.

L. In entering into this Consent Decree, I.S.A. (hereinafter referred to as "Settling Defendant") does not admit any liability arising out of the transactions or occurrences alleged in the complaint. The purpose of this Consent Decree is to provide for Settling Defendant's reimbursement of a portion of the United States' Past Response Costs.

M. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the reimbursement of the Superfund, and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607 and 9613(b). This Court also has personal jurisdiction over the Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, the Settling Defendant waives all objections and defenses that it may have to the jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge the entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon the Settling Defendant and its heirs, successors, and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of the Settling Defendant under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et seq.

b. "Consent Decree" shall mean this Decree and any attached appendices.

c. "Day" shall mean a calendar day unless expressly stated to be a Working Day. "Working Day" shall mean a day other than a Saturday, Sunday or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal Holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

e. "Escrow Agent" shall mean the escrow agent designated by the Parties to receive and disburse funds from the acquisition of I.S.A. pursuant to an agreement dated October 18, 1994.

f. "Escrow Agreement" shall mean the agreement entered into between the Parties and the Escrow Agent on October 18, 1994 to escrow \$1,000,000 (one million dollars) from the acquisition of I.S.A., as well as others, pending further instructions. (Attached as Exhibit A).

g. "Interest," in accordance with 42 U.S.C. § 9607(a), shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507. In calculating the Interest EPA may compound on a daily, monthly or annual basis.

h. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

i. "Parties" shall mean the United States and Settling Defendant.

j. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the EPA and the U.S. Department of Justice on behalf of EPA have incurred for response actions at the Hertel Site prior to and including the date of lodging of this Consent Decree.

k. "Section" shall mean a portion of this Consent Decree identified by a roman numeral.

l. "Settling Defendant" shall mean I.S.A. in New Jersey, Inc.

m. "State" shall mean the State of New York.

n. "United States" shall mean the United States of America, including its agencies, departments, and instrumentalities.

o. "Administrative Order" shall mean Administrative Order Index No. II CERCLA-20217, issued by EPA with respect to the Hertel Site on September 21, 1992 to, among others, the Settling Defendant.

p. "Hertel Site" or "Site" shall mean the Hertel Landfill Superfund Site, encompassing approximately 80 acres, located approximately one and one-third miles north of Milton Turnpike, in the Town of Plattekill, Ulster County, New York.

V. REIMBURSEMENT OF RESPONSE COSTS BY SETTLING DEFENDANT

A. Payment of Response Costs to the United States.

4. Upon entry of this Consent Decree, the Escrow Agent shall pay to the United States \$190,000 with interest accrued pursuant to paragraph 5(b) of the Escrow Agreement for Past Response Costs, within the time period and in accordance with any instructions specified in the Escrow Agreement. Payment shall be made by Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice lockbox bank at the Office of the United States Attorney for the Northern District of New York,

according to instructions provided to the Escrow Agent by that Office, referencing CERCLA Number II-CERCLA-95-0220, the DOJ Number, 90-11-2-767A, and the U.S.A.O. File Number 93V0915/001. Any EFTs received at the U.S.D.O.J. lockbox bank after 4:00 P.M. (Eastern Time) will be credited on the next business day. Notice of the EFT and copies of any correspondence from Settling Defendant to the United States Attorney shall also be sent to the United States and EPA as provided in Section XI (Notices) of this Decree.

B. Payment of Civil Penalties and Punitive Damages

5. Upon entry of the Consent Decree, the Escrow Agent shall pay to the United States the amount of \$30,000 with interest accrued pursuant to paragraph 5(b) of the Escrow Agreement, in settlement of the United States' claim for civil penalties pursuant to Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), for Settling Defendant's failure to comply with the Administrative Order. Payment shall be made within the same time and in the same manner as described in the Escrow Agreement and Section V.A., above.

VI. FAILURE TO MAKE TIMELY PAYMENTS

A. Stipulated Penalty.

6. If any amounts due to the United States from the Settling Defendant under this Consent Decree are not paid by the required date, and such delay in payment is due to the fault of the Settling Defendant, the Settling Defendant shall pay as a

stipulated penalty \$1500.00 for each day that such payment is late. Stipulated penalties are due and payable within 30 days of the Settling Defendant's receipt from EPA of a demand for payment of the penalties. All payments under this Paragraph shall be paid by certified check made payable to "EPA Hazardous Substance Superfund," shall be mailed to EPA Region II, Attn: Superfund Accounting, P.O. Box 360188M, Pittsburgh, PA 15251, and shall reference CERCLA Number II-CERCLA-95-0220 and DOJ Case Number 90-11-2-767A. Copies of checks paid pursuant to this Paragraph, and any accompanying transmittal letters, shall be sent to the United States as provided in Section XI (Notices and Submissions). Stipulated penalties under this Paragraph shall accrue as provided above regardless of whether EPA has notified the Settling Defendant of the violation or made a demand for payment, but need only be paid upon demand. In no event shall the Escrow Agent be liable for stipulated penalties.

7. In the event that the United States brings an action to collect any payment required by this Consent Decree, the Settling Defendant shall reimburse the United States for all costs of such action, including, but not limited to, costs of attorney time.

8. Payments made under Paragraphs 6 and 7 shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to make timely payments required by this Decree.

VII. COVENANT NOT TO SUE BY PLAINTIFF

9. In consideration of the payment(s) that will be made by the Settling Defendant under the terms of this Consent Decree, and except as specifically provided in Paragraph 10, the United States covenants not to sue the Settling Defendant pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for Past Response Costs, as defined in this Consent Decree, and also covenants not to sue the Settling Defendant pursuant to Sections 106(b)(1) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(b)(1) and 9607(c)(3) for civil penalties and punitive damages for the Settling Defendant's failure or refusal to comply with the Administrative Order. This covenant not to sue shall take effect upon receipt by the United States of all payments required by Section V of this Consent Decree. This covenant not to sue extends only to the Settling Defendant and does not extend to any other person.

10. Reservations of Rights.

a. General The covenant not to sue set forth in Paragraph 9 does not pertain to any matters other than those expressly specified therein. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all other matters. Except as expressly provided in Paragraph 9, nothing contained herein shall in any way limit or restrict the response and enforcement authority of the United States to initiate appropriate action, either judicial or administrative, under Sections 104, 106, and 107 of CERCLA, 42 U.S.C. §§ 9604, 9606, and 9607, or any other provision of law,

against Settling Defendant or against any other person or entity not a party to this Decree.

b. Specific Reservations. The covenant not to sue set forth in Paragraph 9 does not apply, inter alia, to the following:

- (1) claims based on a failure by Settling Defendant to meet the requirements of this Consent Decree;
- (2) liabilities for damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such destruction, injury or loss;
- (3) liabilities for response costs that have been or may be incurred by any natural resources trustee;
- (4) criminal liability;
- (5) liability for costs incurred or to be incurred by the United States in connection with the Hertel Site that are not within the definition of Past Response Costs set forth in Paragraph 3 of this Consent Decree;
- (6) liability arising from the past, present or future disposal, release, or threat of release of hazardous substances outside of the Hertel Site; and
- (7) liability for future disposal and future releases or threats of releases of hazardous substances at the Hertel Site.

VIII. COVENANTS BY SETTLING DEFENDANT

11. a. Settling Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the

United States with respect to the Hertel Site or this Consent Decree, including, but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507), under CERCLA §§ 106(b)(2), 107, 111, 112, or 113, or any other provision of law, any claim against the United States, including any department, agency, or instrumentality of the United States pursuant to CERCLA Sections 107 and 113 related to the civil penalties and punitive damages paid under this Consent Decree or related to the Past Response Costs, or any claims arising out of response activities at the Hertel Site. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

IX. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

12. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree. The Parties hereto expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Hertel Site against any person not a party hereto.

13. With regard to claims for contribution against Settling Defendant for matters addressed in this Consent Decree, the Parties hereto agree that the Settling Defendant is entitled to

such protection from contribution actions or claims as is provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2).

14. Settling Defendant agrees that with respect to any suit or claim for contribution it brings, subsequent to the lodging of this Consent Decree, for matters related to this Consent Decree, it will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendant also agrees that with respect to any suit or claim for contribution brought against it, subsequent to the lodging of this Consent Decree, for matters related to this Consent Decree, it will notify the United States in writing within 10 days of service of the complaint on it. In addition, Settling Defendant shall notify the United States within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial for matters related to this Consent Decree.

15. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Hertel Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the

enforceability of the covenant not to sue set forth in Section VII (Covenant Not to Sue by Plaintiff).

16. The Settling Defendant hereby certifies that it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Hertel Site since notification of potential liability by EPA regarding the Hertel Site, and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA.

X. NOTICES AND SUBMISSIONS

17. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and the Settling Defendant, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Attn: 90-11-2-767A

William Hoffman
Assistant United States Attorney
Southern District of New York
100 Church Street
19th Floor
New York, NY 10007

James C. Woods
Assistant United States Attorney
United States Courthouse
445 Broadway, Room 231
Albany, New York 12207

As to EPA:

Hertel Landfill Superfund Site Attorney
New York/Caribbean Superfund Branch
Office of Regional Counsel
290 Broadway
New York, New York 10007-1866

As to Settling Defendant:

Kevin J. Brown, Esq.
Mannion, Copani, Alderman & Brown
224 Harrison Street, Suite 306
Syracuse, New York 13202

XI. EFFECTIVE DATE

18. This Consent Decree shall become effective upon the date of its entry by the Court.

XII. RETENTION OF JURISDICTION

19. This Court shall retain jurisdiction of this matter for the purpose of enforcing the terms of this Consent Decree. The Court shall also retain jurisdiction over all matters asserted in the United States' complaint which are resolved by this Consent Decree until such time as Plaintiff's covenant not to sue becomes effective, as set forth in Paragraph 9 herein.

XIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

20. This Consent Decree shall be lodged with the Court for a period of thirty (30) days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

XIII. APPROVAL AND ENTRY BY THE COURT

21. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XIV. SIGNATORIES/SERVICE

22. The undersigned representative of the Settling Defendant to this Consent Decree, the EPA, and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

23. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that

Party with respect to all matters arising under or relating to this Consent Decree. The Settling Defendant waives any objection to service made by mail to the person so identified.

24. This Consent Decree may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

SO ORDERED THIS

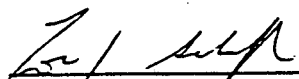
9th DAY OF

July, 2000
~~1995~~


United States District Judge

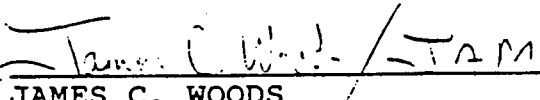
THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Western Publishing Co., Inc., et al., Civil Action No. 94 Civ. 1247 (CGC/DNH), relating to the Hertel Landfill Superfund Site.


FOR THE UNITED STATES OF AMERICA


LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

THOMAS J. MARONEY
United States Attorney for the
Northern District of New York


By:


JAMES C. WOODS
Assistant United States Attorney
United States Courthouse
445 Broadway, Room 231
Albany, New York 12207

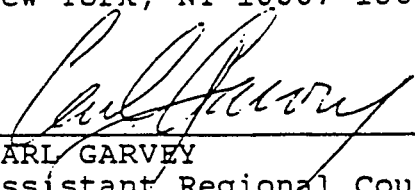

JONATHAN A. MARKS
Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
United States Department of Justice

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STEVEN HERMAN
Assistant Administrator for
Enforcement and Compliance
Assurance
U.S. Environmental Protection
Agency
401 M St., S.W.
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JEANNE M. FOX
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FOR DEFENDANT I.S.A. in
New Jersey, Inc.

Date:

9/29/95

Name
Title
Address

James C. Myer, Jr. Esq.
Attorney

Agent authorized to accept service on behalf of above-signed
Party:

Name: Mannion, Copani, Alderman & Brown
Title:
Address: 224 Harrison Street, Suite 306
Syracuse, New York 13202

EXHIBIT A

ESCROW AGREEMENT

15TH This Escrow Agreement (the "Agreement") is made this day of October, 1994, by and between Round Lake Sanitation Corporation ("Round Lake") and I.S.A. in New Jersey, Inc. ("I.S.A."), the United States of America acting on behalf of the United States Environmental Protection Agency ("U.S. EPA") and Banker's Trust Company ("Escrow Agent").

WHEREAS, I.S.A. and Round Lake and the U.S. EPA have reached an agreement in principle for the resolution of claims against I.S.A. and Round Lake arising under 42 U.S.C. § 9607, to recover past costs that the United States has incurred for response activities taken as a result of releases or threatened releases of hazardous substances into the environment at or from the Warwick Landfill Superfund Site in Warwick, New York, the Hertel Landfill Superfund Site in Plattekill, New York, the Ramapo Landfill Superfund Site in Ramapo, New York, and the Kin-Buc Landfill Superfund Site in Edison Township, New Jersey (the "Sites") and/or claims arising under 42 U.S.C. §§ 9606(b)(1) and 9607(c)(3), for civil penalties and treble damages arising at the Warwick Landfill Superfund Site (collectively the "Enforcement Actions").

WHEREAS, Browning-Ferris Industries of Paterson, New Jersey, Inc., Browning-Ferris Industries of South Jersey, Inc., and Browning-Ferris Industries of New York, Inc. have entered into agreements to purchase, inter alia, the assets of I.S.A. and Round Lake.

WHEREAS, the parties intend that One Million Dollars (\$1,000,000), including any interest accrued while in escrow, from those purchases shall be used to satisfy all Final Judgments (as herein defined) against I.S.A. and Round Lake in the Enforcement Actions.

THEREFORE, the parties agree as follows:

1. Funding

The Escrow Agent shall receive the sum of One Million Dollars (\$1,000,000) in cash or immediately available United States funds, deposited on behalf of, and at the direction of, I.S.A. and Round Lake by Browning-Ferris Industries of New York, Inc. at the closing of the Asset Purchase Agreement between Browning-Ferris Industries of New York, Inc. and Round Lake, Orange County Sanitation and Westfalls Disposal Service, Inc. This sum is to be held by the Escrow Agent for the benefit of the United States for the satisfaction of all Final Judgments entered against I.S.A. and Round Lake in the Enforcement Actions.

2. Escrow Fund

The Escrow Fund shall consist of the combined amount of the One Million Dollars (\$1,000,000) deposited pursuant to Paragraph 1 above and any interest accrued on those funds. The Escrow Fund shall be established subject to the terms and conditions of this Escrow Agreement, upon receipt by the Escrow Agent of the deposit from Browning-Ferris Industries of New York, Inc. on behalf of I.S.A. and Round Lake pursuant to Paragraph 1 above on or after the date first written above. The Escrow Agent will hold the Escrow Fund in accordance with the terms and provisions of this Escrow Agreement.

3. Investment of Escrow Fund

Pending disposition under this Agreement, the Escrow Fund shall be invested and reinvested in Treasury Bills issued by the United States Treasury having a maturity of three months or less. The Escrow Agent shall give notice to the parties annually of the interest earned on the deposit. Otherwise, the Escrow Agent shall have no tax reporting duties with respect to the Escrow Fund. No amount shall be deducted from the Escrow Fund for any tax liability. The Escrow Agent shall not be responsible or liable for any loss suffered in connection with any investments of funds made by it in accordance with this Section.

4. Escrow Agent Fees and Expenses

The Escrow Agent's fees and reasonable expenses, including the reasonable fees and expenses of its counsel, in administering this Escrow Agreement shall be paid by I.S.A. and Round Lake from their corporate funds and shall not be deducted from the Escrow Fund. The Escrow Agent's initial fee schedule is attached. The Escrow Agent hereby acknowledges the pre-payment by I.S.A. and Round Lake of one year's expenses according to the fee schedule and agrees to return to I.S.A. and Round Lake a pro-rata portion of that amount should the Escrow Agreement be terminated prior to one year, less outstanding amounts owed above the pre-paid expenses. This pre-payment shall in no way alter the liability of I.S.A. and Round Lake for additional payments pursuant to Paragraph 8.

5. Distribution of Funds

The Escrow Agent will hold the Escrow Fund in escrow and disburse the Escrow Fund only as set forth herein:

(a) Except as disbursed pursuant to Subsection (b) below, the Escrow Fund, including any interest accrued thereon, shall remain in escrow pending receipt by the Escrow Agent of a Final Judgment in each of the Enforcement Actions. A "Final Judgment" is an order including a consent decree or

administrative settlement resolving one or more of the Enforcement Actions or a final judgment from a United States District Court in one or more of the Enforcement Actions.

(b) In the event of entry of any Final Judgment against I.S.A. and/or Round Lake in any of the Enforcement Actions, as evidenced by written notice to the Escrow Agent from the United States and including a copy of the Final Judgment(s), the Escrow Agent shall within ten days pay the United States the lesser of (i) the amount of the Final Judgment(s) and a pro rata share of accrued interest, and (ii) the then-existing balance of the Escrow Fund, including any interest accrued thereon. The method of payment shall be in accordance with the terms of the Final Judgment(s) as provided to the Escrow Agent.

(c) In the event any funds remain in the Escrow Account after Final Judgment has been entered in the last of the Enforcement Actions in which a Final Judgment is entered and all Final Judgments which may have been entered against I.S.A. and Round Lake have been paid, the balance of the Escrow Account shall be paid to I.S.A. and Round Lake following 30 days written notice from the Escrow Agent to the United States and I.S.A. and Round Lake.

(d) The Escrow Agent shall submit a copy of each statement, report or other document prepared for I.S.A. and Round Lake to the United States. The Escrow Agent shall notify all parties of all disbursements from the Escrow Account, including, but not limited to any disbursements made pursuant to this paragraph, no later than 7 days before such disbursement.

6. Termination

This Escrow Agreement will terminate upon the earlier to occur of:

(a) Payment to the United States of the then-existing balance of the Escrow Fund, including any accrued interest, according to Paragraph 5(b) above; or

(b) Payment to I.S.A. and Round Lake of the then-existing balance of the Escrow Fund, including any accrued interest, according to Paragraph 5(c) above; or

(c) Receipt by the Escrow Agent of written notice from both the United States and I.S.A. and Round Lake jointly consenting to the termination of the Escrow Agreement and giving final direction for the disbursement of the then-existing balance of the Escrow Fund, including any accrued interest.

7. Notices

All notices required to be given hereunder shall be in writing, and shall be given by hand, telecopy, or shall be mailed by first class registered or certified mail, postage prepaid, return receipt requested, and shall be given as follows:

(a) To the United States:

Chief, Environmental Enforcement Section
Re: DOJ #90-11-2-812
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044

and

United States Attorney
Southern District of New York
100 Church Street, 19th Floor
New York, NY 10007

(b) To I.S.A. and Round Lake:

Kevin J. Brown, Esq.
Mannion & Copani
306 Syracuse Building
224 Harrison Street
Syracuse, New York 13202

(c) To the Escrow Agent:

Banker's Trust Company
Corporate Trust & Agency Group -- Environmental
4 Albany Street, 4th Floor
New York, N.Y. 10006

Attn: Paul Dispenza

Any party to this Escrow Agreement may from time to time designate other persons to whom notice shall be given by written notice to all other parties given as required by this Paragraph.

8. Duties and Responsibilities of Escrow Agent

(a) I.S.A. and Round Lake acknowledge and agree that the Escrow Agent (i) shall not be responsible for any of the agreements referred to herein but shall be obligated only for the performance of such duties as are specifically set forth in this Escrow Agreement; (ii) shall not be obligated to take any legal or other action hereunder which might in its judgment involve any

expenses or liability unless it shall have been furnished with indemnification from I.S.A. and Round Lake acceptable to the Escrow Agent; (iii) may rely on and shall be protected in acting or refraining from acting upon any written notice, instruction, instrument, statement, request or document furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper person, and shall have no responsibility for determining the accuracy thereof, and (iv) may consult counsel satisfactory to it, including house counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with the opinion of counsel.

(b) Neither the Escrow Agent nor any of its directors, officer or employees shall be liable to anyone for any action taken or omitted to be taken by it or any of its directors, officers or employees hereunder except in the case of gross negligence or willful misconduct. I.S.A. and Round Lake covenant and agree to indemnify the Escrow Agent and hold it harmless without limitation from and against any loss, liability or expense of any nature incurred by the Escrow Agent arising out of or in connection with this Agreement or with the administration of its duties hereunder, including but not limited to legal fees and other costs and expenses of defending or preparing to defend against any claim or liability, unless such loss, liability or expense shall be caused by the Escrow Agent's willful misconduct or gross negligence. In no event shall the Escrow Agent be liable for indirect, special or consequential damages.

(c) I.S.A. and Round Lake agree to assume any and all obligations imposed now or hereafter by any applicable tax law with respect to the payment of the Escrow Fund, and to indemnify and hold the Escrow Agent harmless from and against any taxes, additions for late payment, interest, penalties and other expenses, that may be assessed against the Escrow Agent on any such payment or other activities under this Agreement. I.S.A. and Round Lake undertake to instruct the Escrow Agent in writing with respect to the Escrow Agent's responsibility for withholding and other taxes, assessments or other governmental charges, certifications and governmental reporting in connection with its acting as Escrow Agent under this Agreement.

I.S.A. and Round Lake agree to indemnify and hold the Escrow Agent harmless from any liability on account of taxes, assessments or other governmental charges, including without limitation the withholding or deduction or the failure to withhold or deduct same, and any liability for failure to obtain proper certifications or to properly report to governmental authorities, to which the Escrow Agent may be or become subject in connection with or which arises out of this Agreement,

including costs and expenses (including reasonable legal fees), interest and penalties.

(d) I.S.A. and Round Lake agree to pay or reimburse the Escrow Agent for any legal fees and expenses incurred in connection with the preparation of this Agreement and to pay the Escrow Agent's reasonable compensation for its normal services hereunder in accordance with the attached fee schedule. The Escrow Agent shall be entitled to reimbursement on demand for all expenses incurred in connection with the administration of the escrow created hereby which are in excess of its compensation for normal services hereunder, including without limitation, payment of any legal fees incurred by the Escrow Agent in connection with resolution of any claim by any party hereunder.

(e) The Escrow Agent has no responsibility with respect to management of the Sites, the remediation of the Sites, the payment of any costs of remedial or removal actions, damages, penalties, fines, taxes or other expenses related to the Sites or compliance by Round Lake or I.S.A., the Enforcement Actions, the Final Judgments or any other agreement or to conduct any duties other than the express duties set forth herein.

(f) This Section 8 survives the terms of the Agreement.

9. Binding Law

This Escrow Agreement shall be governed by and be construed in accordance with the laws of the State of New York without regard for the laws of such state regarding conflict of laws.

10. Resignation, Removal, Successor

(a) The Escrow Agent may resign from this Escrow Agreement, and thereby become discharged from the obligations hereby created, by notice in writing given to the United States and I.S.A. and Round Lake not less than thirty (30) days before such resignation is to take effect.

(b) The Escrow Agent may be removed at any time by an instrument or concurrent instruments in writing delivered to the Escrow Agent and signed by counsel for the United States.

(c) If at any time hereafter the Escrow Agent shall resign, be removed, be dissolved or otherwise become incapable of acting, or the position of the Escrow Agent shall become vacant for any of the foregoing reasons or for any other reason, I.S.A. and Round Lake shall promptly appoint a successor to the Escrow Agent after giving notice to, and receiving approval to do so from, counsel for the United States. Upon such appointment, such

successor shall execute, acknowledge, and deliver to its predecessor, and also to I.S.A. and Round Lake, an instrument in writing accepting such appointment hereunder, and thereupon such successor, without any further act, shall become fully vested with all the rights, immunities, and powers, and shall be subject to all of the duties and obligations of its predecessor; and every predecessor Escrow Agent shall promptly deliver all property and monies held by it hereunder to such successor.

In the event that a successor has not been appointed within thirty (30) days of the date of such resignation, removal, dissolution, incapacity or vacancy, the Escrow Agent shall deposit the full amount of the Escrow Funds with the Clerk of the United States District Court for the Southern District of New York. Upon so depositing the Escrow Fund, the Escrow Agent shall be released from all future liability under the terms hereof.

11. Disputes

I.S.A., Round Lake, and the Escrow Agent hereby irrevocably submit to the jurisdiction and venue of the United States District Court for the Southern District of New York in connection with any action or proceeding arising out of, or related to, the Escrow Agreement. The Escrow Agent may seek the advice of the United States and I.S.A. and Round Lake with respect to any uncertainty it may have concerning its obligations under this Escrow Agreement. If the United States and I.S.A. and Round Lake cannot agree as to how to resolve any such uncertainty, any dispute with respect thereto shall be presented to the United States District Court for the Southern District of New York. Nothing herein shall impair the Escrow Agent's right to seek advice with respect to this Escrow Agreement from its own counsel.

12. Headings

The headings in this Escrow Agreement are merely for convenience and shall not be used in interpreting any of the provisions.

13. Binding Effect: Successors and Assigns

This Escrow Agreement shall be binding upon, and inure to the benefit of, the respective parties hereto and their successors and assigns.

14. Counterparts

This Escrow Agreement may be executed in separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

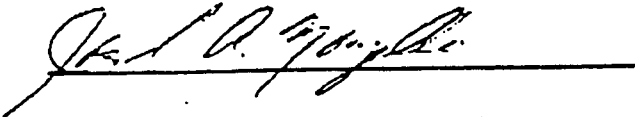
15. Modification

This Escrow Agreement contains the complete agreement between the parties. This Escrow Agreement may not be amended, altered or modified except by written instrument duly executed by all of the parties to this Agreement.

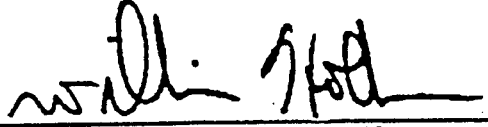
IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be executed as an agreement under seal as of the day and year first written above.

FOR I.S.A. IN NEW JERSEY, INC. AND ROUND LAKE SANITATION CORPORATION:


Joseph A. Mongelli
Round Lake Sanitation Corp. and I.S.A. in New Jersey, Inc.
P.O. Box 211, North Main Street
Monroe, New York 10950


FOR THE UNITED STATES:

MARY JO WHITE
United States Attorney for the
Southern District of New York


By: WILLIAM HOFFMAN
Assistant United States Attorney
100 Church Street, 19th Floor
New York, NY 10007
(212) 385-6250

FOR THE ESCROW AGENT:


Name: PAUL DISPENZA
Title: Assistant Treasurer
Address: 4 ALBANY ST NY NY 10006
Tele: 212 250-6236